(1909) 196 N. Y. 487, 89 N. E. 1082. *Cf.* *Sucker v. Cranmer* (1914) 127 Minn. 124, 149 N. W. 16. It has also been held that one who in good faith paid taxes on property with the intention of protecting his lien is entitled to be subrogated to the lien of the state, although the lien supposed to exist and for the protection of which the person paid the taxes did not in fact exist. *Spokane v. Security Sav. Soc.* (1907) 46 Wash. 150, 89 Pac. 466; *Kemp v. Cossart* (1885) 47 Ark. 62, 14 S. W. 46. Therefore, it is submitted that the plaintiff should have been granted an equitable lien. Also, it seems well settled that most modern courts would have allowed a quasi-contractual remedy, if proper pleadings were drawn. *Hogg v. Longstreet* (1881) 97 Pa. St. 255; Woodward, *Quasi-Contracts* (1913) sec. 248.

MORTGAGES—USURY—STATUTORY DEFENCE.—A state statute made all contracts for the payment of loans with usurious interest unenforcible as to the interest. The plaintiff executed a mortgage to the defendant as security for a loan at a usurious rate of interest. After the plaintiff had paid more than the amount of the principal as interest, the defendant foreclosed under power of sale and purchased the land himself. The plaintiff immediately brought a bill for the cancellation of the mortgage and the foreclosure deed. *Held* (two judges *dissenting*), that this bill could not be maintained. *Jones v. Meriwether* (1919, Ala.) 82 So. 185.

Under statutes making contracts for the payment of loans at a usurious rate of interest void, a judgment of foreclosure is valid, even though the debt for which it was rendered was void on account of usury. *Bell v. Fergus* (1892) 55 Ark. 536, 18 S. W. 931; *Wilkson v. Holton* (1904) 119 Ga. 557, 46 S. E. 620. A mortgagor can not avail himself of usury after a sale under power to a *bona fide* purchaser. *Ferguson v. Doden* (1892) 111 Mo. 208, 19 S. W. 727. But since the mortgagor has had no day in court, if the mortgagee, or a person with notice of the usury, becomes a purchaser at such a sale, it can be set aside. *Jackson v. Dominick* (1817, N. Y.) 14 Johns. 435; *Jordan v. Humphrey* (1884) 31 Minn. 495, 18 N. W. 450. If the plaintiff in the principal case had brought this action before the foreclosure he could have had the amount, which he had paid as interest, applied to the principal. *Barclift v. Fields* (1906) 145 Ala. 264, 41 So. 84. A sale under foreclosure in compliance with a power after the debt secured has been paid, may be vacated at any time before the statute of limitations has run, when the mortgagee is the purchaser. *Askew v. Sanders* (1887) 84 Ala. 356, 4 So. 167; *Liddell v. Carson* (1899) 122 Ala. 518, 26 So. 133. The principal case turned on the interpretation of the local statute. The majority of the court held that it required affirmative action on the part of the debtor before foreclosure under a power, in order to avail himself of the benefit of this statute. The minority contended that the debt was reduced *pro tanto* as the payments of usurious interest were made. It would seem that the view of the minority is more in accord with the spirit of the courts and the purpose of the statute.

SALES—RESCISSION—MUTUAL MISTAKE OF FACT.—The plaintiff purchased ten shares of bank stock from the defendant. The price was set according to the value shown by the books of the bank. These books later proved to be false, though neither party knew of this at the time of the sale. *Held*, that an innocent, mutual mistake respecting value did not empower the plaintiff to rescind. Hallam, J. *dissenting*. *Castello v. Sykes* (1919, Minn.) 172 N. W. 907.

The decision of the court seems clearly correct. Rescission will not be granted

in every case of a mutual mistake. See Black, *Rescission and Cancellation* (1916) sec. 134. Where there is a conscious assumption of risk, the courts will give no relief. *Wood v. Boynton* (1885) 64 Wis. 265, 25 N. W. 42. In the instant case, the parties relied upon the accuracy of the books of the bank in computing the value of the stock. Each knew of the possibility of falsification; each gambled on it. And a disappointed buyer or seller cannot be allowed to upset contracts because the value of any other collateral attribute of the stock resulted differently than expected. *Sankey v. First Nat. Bank* (1875) 78 Pa. St. 48. See *Cavanaugh v. Tyson* (1917) 227 Mass. 437, 116 N. E. 818, 820. The power to rescind in the case of a mutual mistake does not exist unless the physical object or legal relations actually received is different in substance from that bargained for. So the sale of a note will not be dissolved merely because the maker proved to be insolvent. *Hecht v. Batcheller* (1888) 147 Mass. 335, 17 N. E. 651. In the instant case, as in the above note case, the plaintiff received exactly what he intended to buy; a right or claim against the bank. In order to nullify a transaction, the difference in the properties of the object or in the jural relations which are the subject of the sale must be so substantial as would have affected the very basis or understanding on which the parties contracted. *Sherwood v. Walker* (1887) 66 Mich. 568, 33 N. W. 919. Yet what is a substantial difference is a matter of degree with much room for variance. Therefore, it is submitted, that the result must depend upon the usages and ideas of the business community; that it must be determined in each case, for what the money was paid, and what risks each party assumed, not simply whether the value or other such subsidiary quality has proved otherwise than expected.

TAXATION—INHERITANCE TAXES—FEDERAL ESTATE TAX—NOT CHARGEABLE TO GENERAL LEGATEE.—A will gave legacies of $25,000 each to testatrix's three cousins and left the residue to trustees for other beneficiaries. The executors, having paid a federal estate tax of over $50,000, which was about four *per cent.* of the whole net estate, deducted on account of such tax the same *per cent.* from each legacy. *Held,* that the federal estate tax was payable out of the estate and was not chargeable against the legatees. *In re Hamlin* (1919, N. Y. Ct. App.) 124 N. E. 4.

There would seem to be little room for debate as to the character of the tax upon the decedent's estate imposed by the Internal Revenue Law (Sept. 8, 1916) ch. 463, sec. 201. It is a tax upon the passing of the estate as a whole, not upon the transfer of the shares of the several beneficiaries. As pointed out in the principal case, the reports of the Congressional Committee in charge of the legislation as well as the language of the Act itself make this perfectly clear. And such has been the interpretation of the Act by other courts. See (1918) 27 YALE LAW JOURNAL, 1055; 28 *ibid.* 194, 517. But the executors argued that certain sections of the Act required, by implication, that the tax be equitably apportioned among all persons benefiting from the transfer of the estate. So the Surrogate court had ruled. Accord, *In re Douglass' Estate* (1918, Surr.) 171 N. Y. Supp. 956. The opposite view, which is now adopted by the Court of Appeals, is believed to be the correct interpretation of the Act. Under the English statutes "estate duty" upon property which passed to the executor at the time that the duty was imposed is similarly payable out of the residue. See 13 Halisbury, *Laws of England* (1910) 219; *Re Pullen* [1910] 1 Ch. 564. But real estate and other property not passing to the executor bears its rateable portion of the estate duty. 13 Halisbury, *op. cit.* 220; *In re Sharman* [1901] 2 Ch. 280. The alleged injustice of the principal case in placing the burden of